



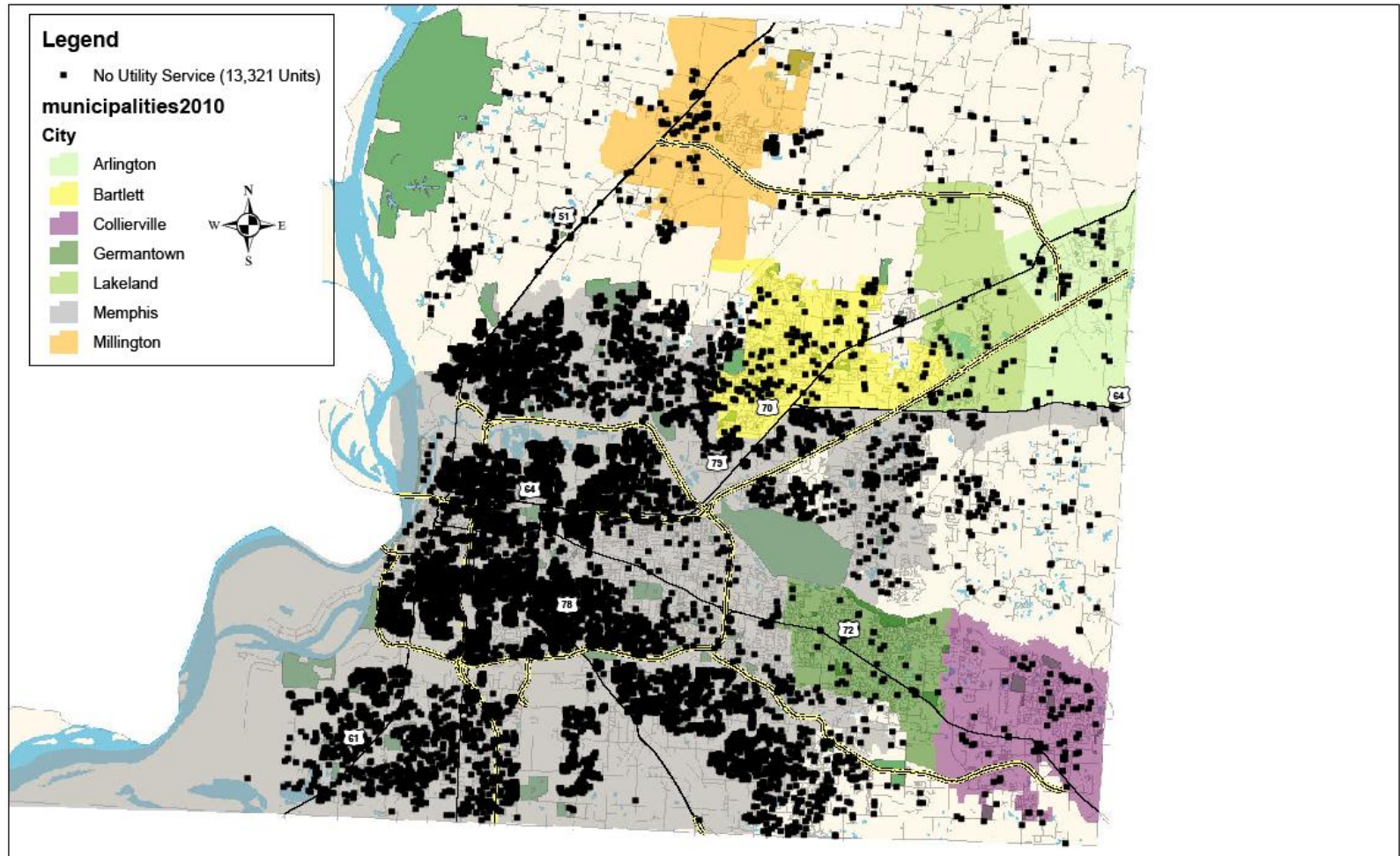
Civil Litigation: One Municipal Tool in the Blight Wars

Presented By Steve Barlow
Brewer & Barlow PLC

**2012 West Tennessee Fair Housing
Month Commemoration**

April 13, 2012

Blight: The Extent of the Challenge



Residential Housing with no utility service in 2010

Agency Responsibility Matrix for Abandoned and Neglected Properties and Structures

AGENCY	City Fire Dept. Anti-Neglect Section	Enhancement Code Enforcement	Construction Code Enforcement	Health Dept.	City Police	Memphis Light Gas And Water
Neglected Structure Type						
Single Family Residential and Duplex within City and outside historic districts (Occupied within last 365 days)	Not covered	Primary Responsibility	Secondary Responsibility	Section 9-8-21 Nuisance abatement only	Enforcement Support	Energy Efficiency Enforcement (Rented or Leased Only)
Multifamily, Triplex, Quads (Occupied within the last 90 days)	Secondary Responsibility	Secondary Responsibility	Secondary Responsibility	Section 9-8-21 Nuisance abatement only	Enforcement Support	Energy Efficiency Enforcement (Rented or Leased Only)
Multifamily Apartments (Occupied within last one year)	Secondary Responsibility	Secondary Responsibility	Secondary Responsibility	Section 9-8-21 Nuisance abatement only	Enforcement Support	Energy Efficiency Enforcement (Rented or Leased Only)
Commercial – Residential (Hotels, Boarding Houses, Etc.)	Primary Responsibility	Secondary Responsibility	Secondary Responsibility	Section 9-8-21 Nuisance abatement & Hotel/Motel Regulation under State Contract	Enforcement Support	
Commercial - Other	Primary Responsibility City Code Section 14-8	Secondary Responsibility	Secondary Responsibility	Section 9-8-21 Nuisance abatement only	Enforcement Support	
Governmental Building - Federal or State	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered	Not Covered
Government Building - City or County	Not Covered	Notice to Department or Agency Owners - City Only	Notice to Department or Agency Owners County Only	Not Covered	Security Responsibility City Only	Not Covered unless Owned by MLG&W

Why Problem Properties Matter

- A study in Philadelphia found that each home within 150 feet of an abandoned home declined in value by an average of \$7,627.00; homes within 150 to 299 feet declined in value by \$6,810.00; and homes within 300 to 449 feet declined in value by \$3,542.00.
 - Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 20 (2004).

Economic Impact of Abandonment

The Daily News & Chandler Reports

Foreclosure Effect

Date Range: 10/1/2008 to 12/31/2008

Zip Codes: 38016,38018

Assessed Year: 2008

		38016 - Cordova-North	38018 - Cordova-South	Total
Q4 - 2008	Total No of Assessor Parcels	13,107	11,609	24,716
	Total Appraisal Value	\$2,294,199,000	\$2,102,038,900	\$4,396,237,900
	Median Property Value	\$166,200	\$155,700	\$161,700
	No of Foreclosures	70	55	125
	% of Parcels Foreclosed	0.53%	0.47%	0.51%
	Total Appraised Value of Foreclosures	\$12,901,600	\$10,097,800	\$22,999,400
	No. of Foreclosures Resold this Period	69	44	113
	Total Sales Amt of Resold Property	\$9,053,065	\$6,233,546	\$15,286,611
	Avg Days after F/C for Resale	63	56	61
	Amt of Discount - Resale vs. Appraisal	(\$3,733,135)	(\$2,296,654)	(\$6,029,789)
	Avg % of Discount - Resale vs. Appraisal	-29%	-27%	-28%
	Non-FC Homes within 1/8 Mile	7,522	3,593	11,115
	Appraisal Value of Homes in 1/8 Mile	\$1,362,428,800	\$618,275,100	\$1,980,703,900
	Non-FC Homes 1/8 -1/4 Mile	7,745	4,356	12,101
	Appraisal Value in 1/8-1/4 Mile	\$1,368,214,600	\$755,956,400	\$2,124,171,000
	Market Effect @ 1.3% 1/8 Mile	(\$18,597,153)	(\$8,439,455)	(\$27,036,608)
	Market Effect @ .6% 1/8-1/4 Mile	(\$8,209,288)	(\$4,535,738)	(\$12,745,026)
	Computed Change in Assessment	(\$6,701,610)	(\$3,243,798)	(\$9,945,409)
	Computed Change in Tax Base @ 4.06%	(\$272,085)	(\$131,698)	(\$403,784)

Why Litigation Works

- ❖ People take a court date more seriously than a citation
- ❖ Cause of Action provides for more dramatic remedy than previously attempted to be imposed administratively or through traditional misdemeanor citation to the courts
- ❖ Money and property are at risk
- ❖ Other mechanisms for enforcement have limitations
- ❖ Goal: Aggressive litigation coupled with robust and consistent code enforcement

267 Ayers Prior to Lawsuit



267 Ayers Prior to Lawsuit



267 Ayers 60 days after lawsuit filed



267 Ayers Today



986 Peabody Prior to Lawsuit



"Release the lions!"

986 Peabody is ready for rental
in Peabody Valley

Grand Opening Saturday August 27th 10-2 pm

2 bedrooms
1 bath
Efficient heating

Completely rebuilt
from the ground up.
Classic
1948 structure.

901-521-1617

FP Memphis, LLC



Range of Application of Law



**Tennessee Neighborhood
Preservation Act (NPA)
TCA § 13-6-101 to 107**

Two Causes of Action

Damages



Community Standards

Receivership



Public Nuisance

TCA 13-6-104 – Action For Damages

1. Sue for Money Judgment under the Neighborhood Preservation Act if an owner “fails to maintain community standards” at certain types of property.
-
- Q. What problem property owners can be sued for a money judgment for failure to maintain community standards?
- A. Owners of “Residential Rental Property” or “Unoccupied Residence”. This means: Single family or duplex property that is occupied by renters or unoccupied. (Cannot sue a homeowner who lives at his home under this section)
-
- Q. Who can sue under this section?
- A. An “affected” homeowner who is owner occupant at his principal place of residence.

TCA 13-6-106 – Action For Receivership

Title 13 Public Planning And Housing

Chapter 6 Neighborhood Preservation

Tenn. Code Ann. § 13-6-106 (2008)

13-6-106. Civil action to enforce compliance -- Draft order of compliance.

- (a) **Any nonprofit corporation as defined in § 13-6-102, or any interested party or neighbor, may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of any building or structure that is not occupied by any owner, tenants or residents for failure to comply with that ordinance or regulation. If the petitioner has not attached a certificate of public nuisance to the complaint, the court, by written notice to the chief housing officer and the chief legal officer of the municipal corporation, may request that the code enforcement entity complete its inspection and issue a certificate of public nuisance or denial including a list of the reasons for the determination within thirty (30) calendar days. If the code enforcement entity fails to respond within thirty (30) calendar days of written notice, then the court shall schedule a hearing requesting that the code enforcement entity be present, with its findings, and participate in the hearing of the issue of public nuisance.**

NPA Highlights

- **Applicable only in Shelby County and Davidson County**
- **Successful Plaintiff can recover attorneys' fees from defendant**
- **Original Jurisdiction in Environmental Court, concurrent with Chancery and Circuit - Appeals go to Tennessee Court of Appeals**
- **Broad standing to file ("Any interested party")**
- **Target property must be unoccupied**

Receivership to Abate Nuisance

“Public Nuisance” defined for purposes of the TNPA

13-6-102 (8) “Public nuisance” means any vacant building that is a menace to the public health, welfare, or safety; structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, dangerous to human life, or no longer fit and habitable; a nuisance as defined in § 29-3-101(a); or is otherwise determined by the local municipal corporation or code enforcement entity to be as such;

“Public Nuisance” defined for purposes of the TNPA

29-3-101 (a)(2). “Nuisance” means that which is declared to be such by other statutes, and, in addition thereto, means any place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, unlawful sale of intoxicating liquors, unlawful sale of any regulated legend drug, narcotic or other controlled substance, unlawful gambling, any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute matter or materials in violation of §§ 39-17-901—39-17-908, § 39-17-911, § 39-17-914, § 39-17-918, or §§ 39-17-1003—39-17-1005, quarreling, drunkenness, fighting or breaches of the peace are carried on or permitted, and personal property, contents, furniture, fixtures, equipment and stock used in or in connection with the conducting and maintaining any such place for any such purpose;

“Unoccupied Buildings” under Shelby County Anti-Neglect Code

Sec. 14-4-32 Requirements for unoccupied buildings.

- A. An unoccupied building or structure which is unsafe, or unfit for human habitation or other authorized use or which does not conform with the provisions of this code is a vacant building.**
- B. A determination of vacancy and a determination of noncompliance with a notice or order issued under this section may be based on observation that a building or structure is open to casual entry; or a building or structure has boarded windows or doors; or a building lacks intact window sashes, walls or roof surfaces to repel weather entry.**
- C. Every such vacant building or structure is declared to be a fire hazard; is a danger to the public health, safety or welfare; invites plundering; constitutes a nuisance; and promotes urban blight and deterioration in the community.**
- D. All vacant buildings or structures shall be safeguarded by removing all litter, trash, accumulations of flammable or combustible waste or rubbish and all other debris. All windows, doors and other openings shall be closed and securely locked, barricaded or otherwise secured. All windows, doors and other openings within twenty (20) feet of the ground or readily accessible shall be further protected by boarding up with substantial material approved by the manager of housing and code enforcement.**
- E. While the building or structure remains vacant, it shall be kept boarded and secured; and the premises shall be kept free of all litter, trash, garbage, rubbish, all other debris and excessive weeds and grass at all times.**
- F. Such boarding and cleaning shall not relieve any owner or party in interest of responsibility to repair and maintain the property in conformity with provisions of this code.**

(Ord. 4232, 1-4-94; Code 1985 § 48-39)

“Dangerous Structure” under Shelby County Anti-Neglect Code

Sec. 14-4-34 Dangerous structures defined.

All buildings or structures, including among others, garages, sheds, fences and similar accessory structures, which have any or all of the following defects shall be deemed "dangerous structures" and are defined as but not limited to the following:

- A. Those which by reason of inadequate maintenance, dilapidation, obsolescence or abandonment are unsafe, unsanitary or which constitute a fire hazard;**
- B. Those whose exterior walls lean or buckle to such an extent that excessive bond or anchorage stresses are created;**
- C. Those whose foundation members, including joists, sills, piers, rafters, studs and footings, are damaged, deteriorated, missing and are not capable of bearing imposed loads safely;**

“Dangerous Structure” under Shelby County Anti-Neglect Code (continued)

- D. Those which, by damage or deterioration of the nonsupporting outside walls or covering, including the roof and floors, are dangerous to the occupant or are detrimental to public safety and welfare;**
- E. Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, morals or the general health and welfare of the occupants or the people of the city;**
- F. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used;**
- G. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human occupancy or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein;**
- H. Those which have parts thereof which are so attached or connected that they may fall or separate and injure occupants or members of the public or may damage property;**
- I. Those with roof covering, which leak to such an extent as to cause plaster to fall, or which repeatedly with every rainfall, saturate the chattels or the occupant or the supporting members of the roof, or the electric wiring or fixtures so as to render them unsafe;**
- J. Those having inadequate facilities for egress in case of fire or panic;**
- K. Those having light, air, ventilation and sanitation facilities, which are inadequate to protect the health, safety or general welfare of human beings, who live or may live therein.**

(Ord. 4232, 1-4-94; Code 1985 § 48-51)

“Public Nuisance” under Shelby County Anti-Neglect Code

Sec. 14-4-35 Declared a public nuisance.

All dangerous structures within the terms of Section 14-4-34 are declared to be a public nuisance and shall be condemned and vacated, repaired or demolished, as provided in this article.

(Ord. 4232, 1-4-94; Code 1985 § 48-52)

TENNESSEE CODE ANNOTATED

Title 13 Public Planning And Housing

Chapter 6 Neighborhood Preservation

Tenn. Code Ann. § 13-6-106 (2008)

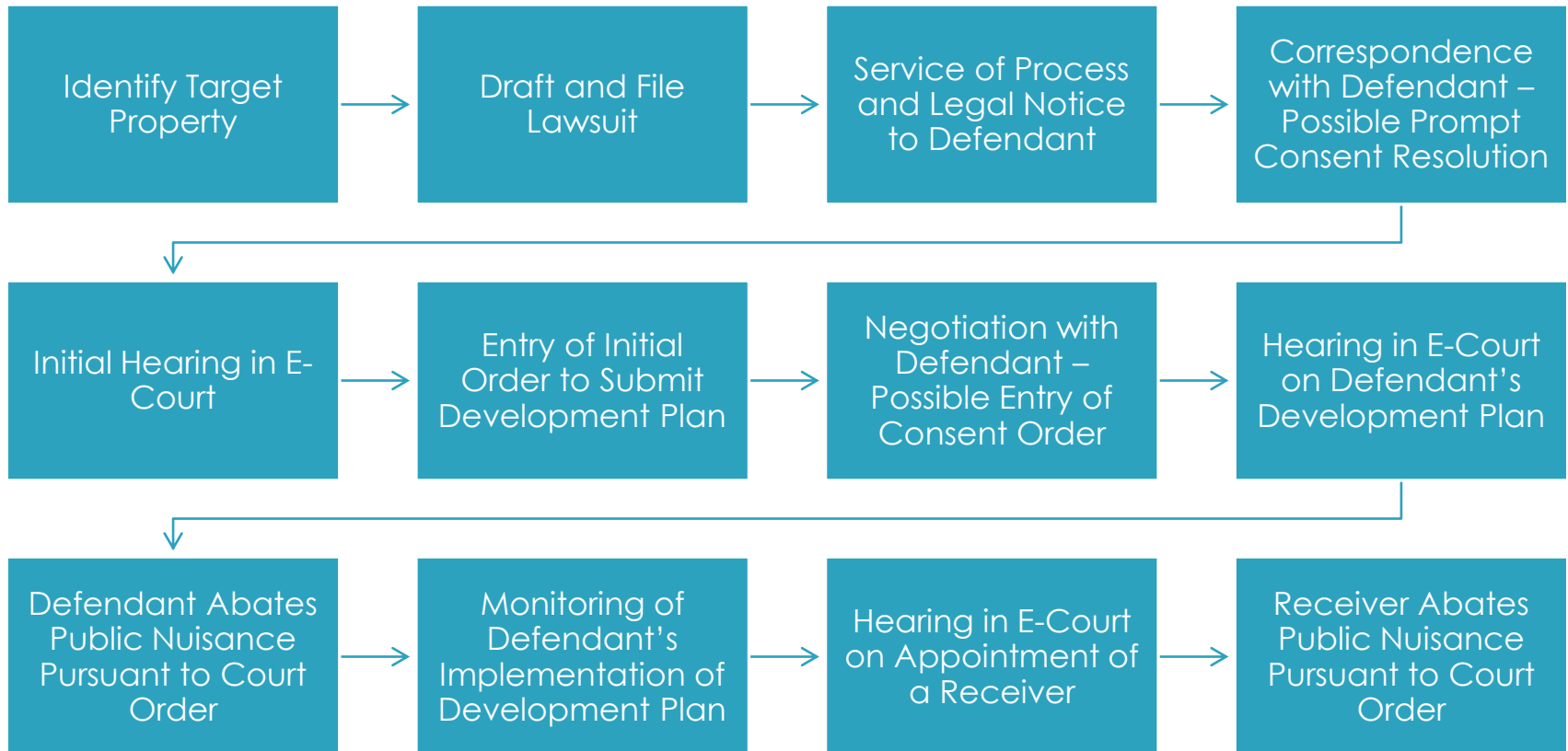
13-6-106. Civil action to enforce compliance -- Draft order of compliance.

- (h) **If the actions pursuant to subsections (f) and (g) fail to abate the public nuisance, the court may appoint a receiver to take possession and control of the building to abate the public nuisance. Prior to a nonprofit corporation being designated a receiver under this section, the nonprofit corporation shall provide proof of certification by the municipal corporation or code enforcement entity where the building is located. The court shall have the discretion to review the certification and supporting documentation and shall determine whether the receiver has the capacity to undertake a particular project.**

“Receiver” defined for purposes of TNPA

- 13-6-102 (9) (A) “Receiver” means either a municipal corporation that agrees to be appointed by the court for the purpose of preserving or improving the property of another, or a nonprofit corporation that has been certified as such by the municipal corporation or code enforcement entity where the building is located. The certification of a nonprofit corporation shall be issued upon receipt of the following:**
- (i) An external verification of nonprofit status;**
 - (ii) The nonprofit corporation's articles of incorporation or bylaws evidencing community development or redevelopment is a part of the mission;**
 - (iii) Evidence of financial capacity to carry out a community development or redevelopment project, including audited financial statements of the organization for the past five (5) years, where applicable;**
 - (iv) The organization's formal conflict of interest policy governing both the staff and the board of directors; and**
 - (v) Evidence of the administrative capacity to successfully undertake a community development or redevelopment project.**
- (B) A receiver appointed pursuant to this subdivision (9) is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office;**

Neighborhood Preservation Act Litigation Process Chart

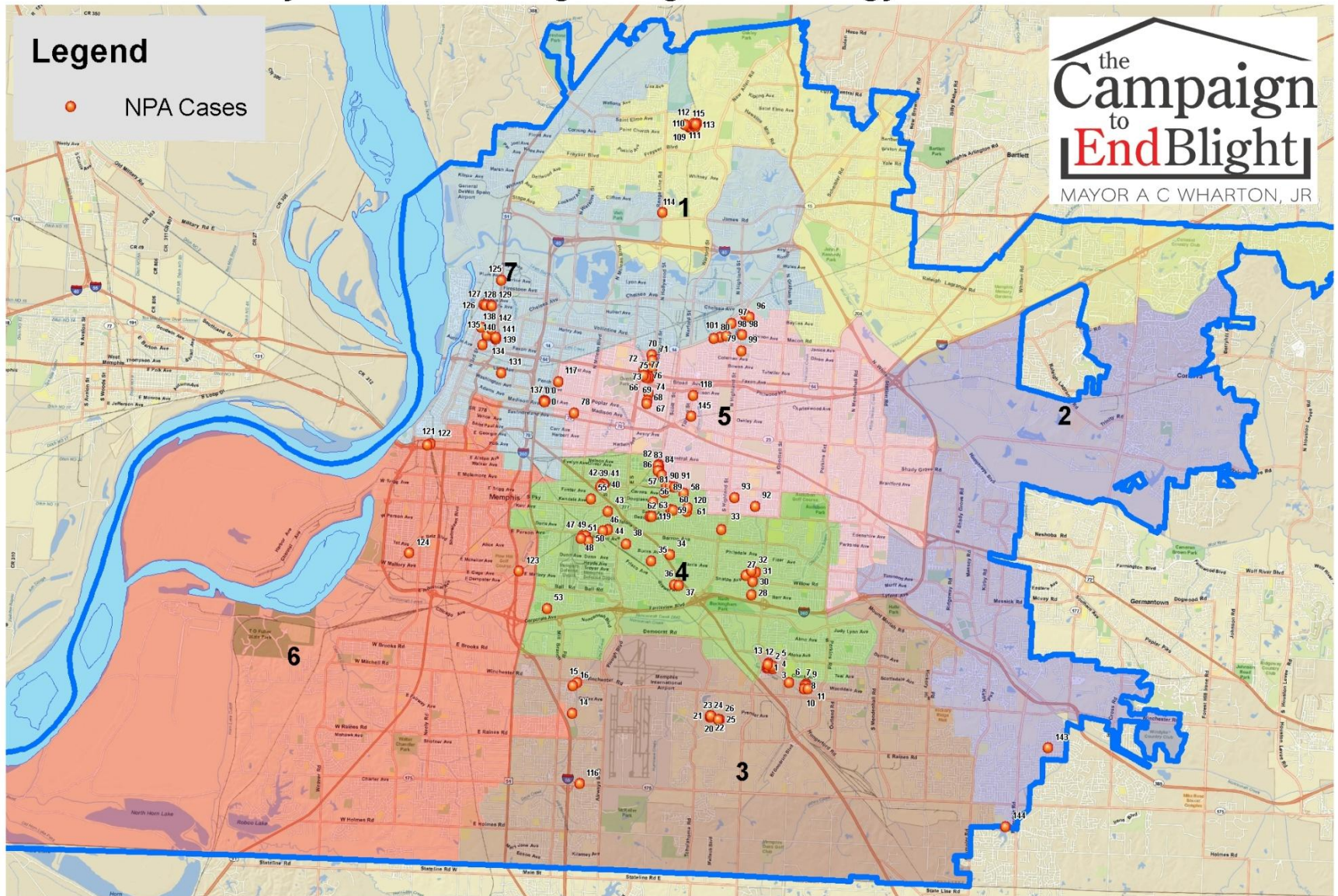


the Campaign to End Blight

MAYOR A C WHARTON, JR



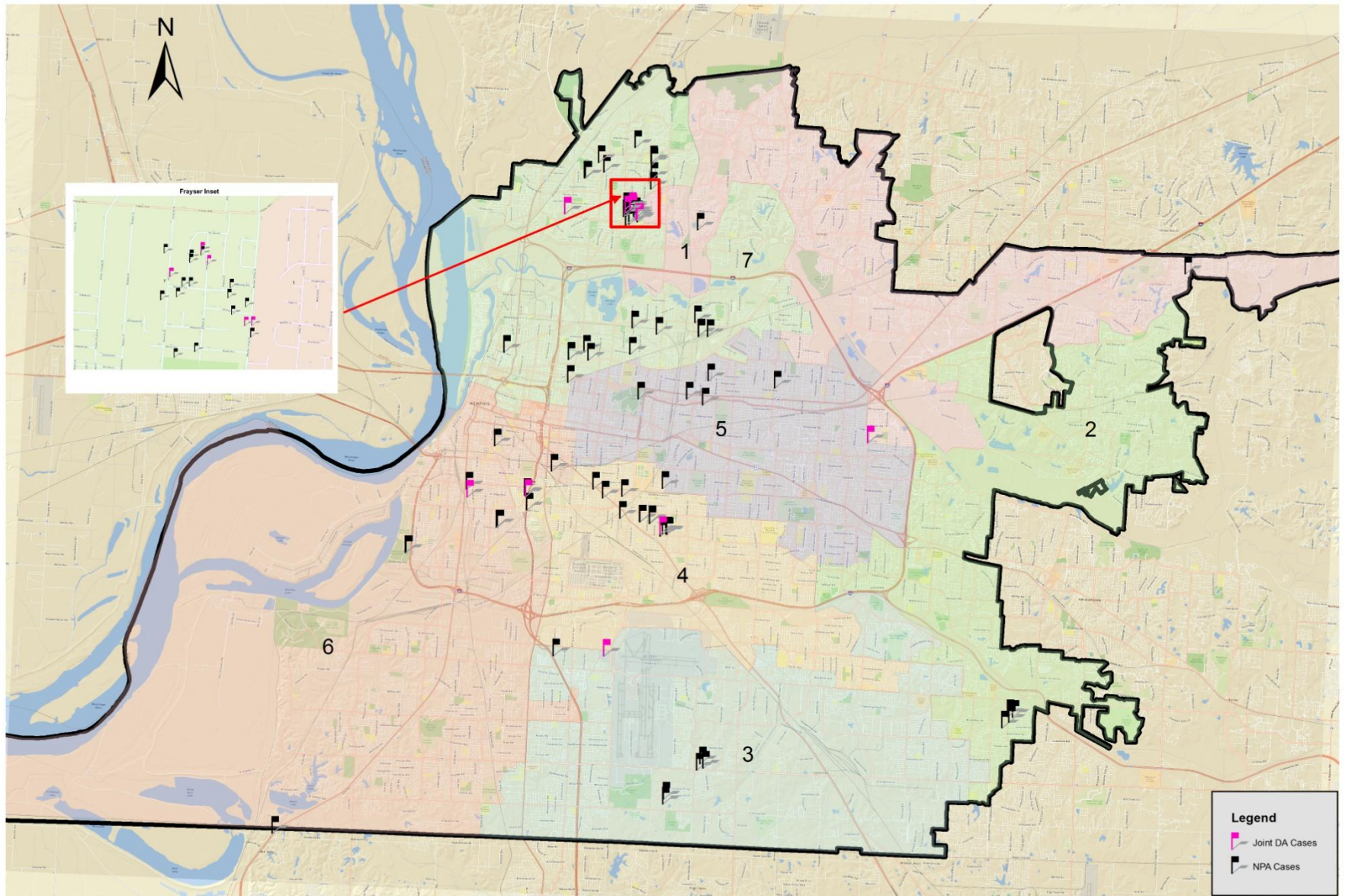
Mayor Wharton's Blight Litigation Strategy – Phase One



0 1.25 2.5 5 Miles

This map was created
by HCD
October 25, 2010

Mayor Wharton's Blight Litigation Strategy

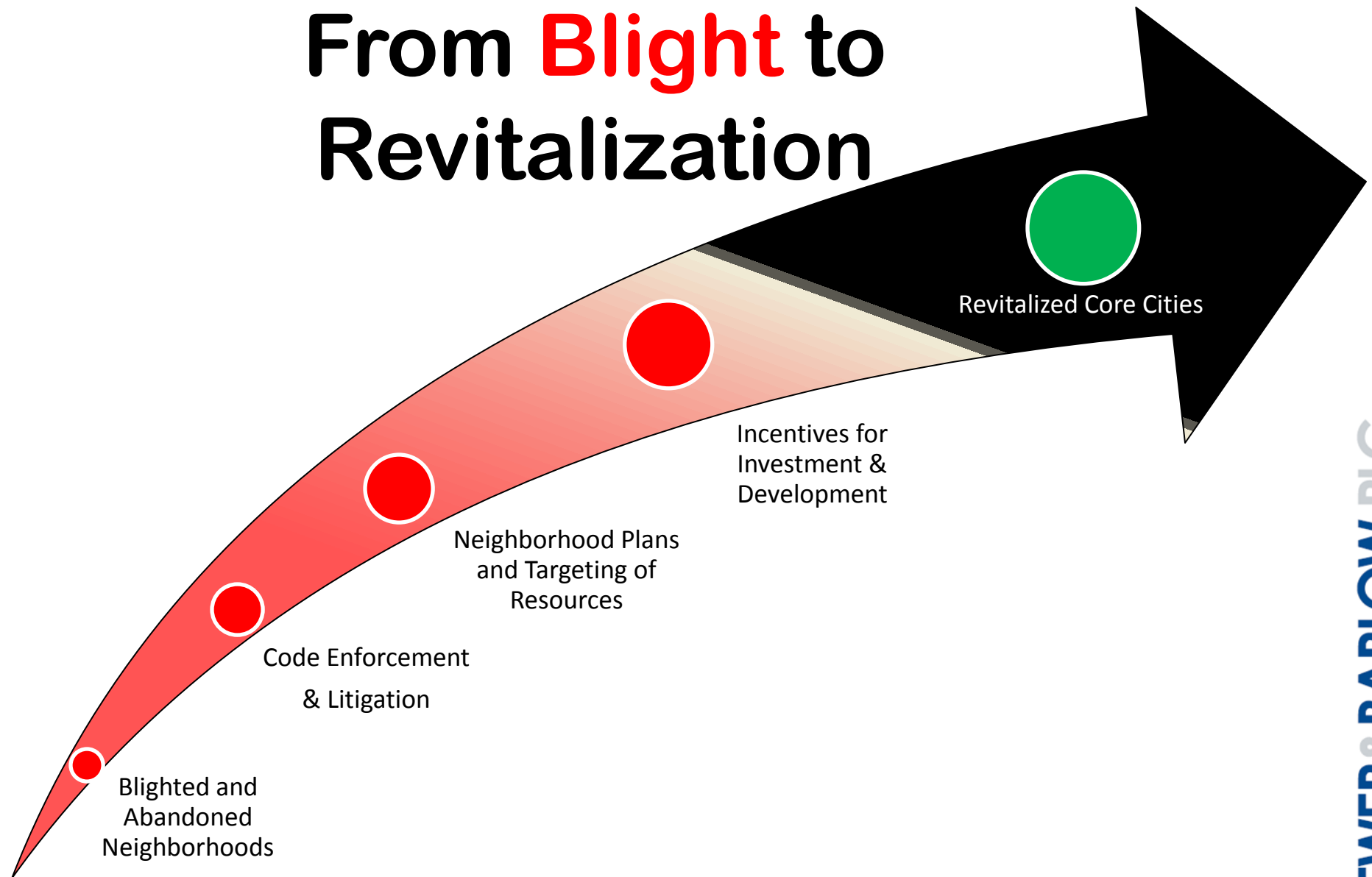


0 2 4 8 Miles

This map was created
by HCO
February 7, 2012



From **Blight** to Revitalization



Other Tools Are Needed

Civil Litigation under the Neighborhood Preservation Act is just one strategy. Other approaches are needed, such as:

- ❖ Robust Enforcement of Tenants' Rights (Occupied Blight)
- ❖ Vacant Property Registry
 - It should not be free to maintain a nuisance
- ❖ Land Banking Authority
 - Government needs a specific authority empowered to acquire, improve, maintain and sell problem properties
- ❖ Tax Foreclosure Reform
 - Marketable/Insurable title post government sale
 - Prohibiting long-term delinquency then “catch-up”

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www.brewerbarlow.com/blight_campaign/